

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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SUMMARY
PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING
July 20, 2017
San Diego, California

I. PUBLIC MEETING**A. CALL TO ORDER AND INTRODUCTIONS**

Chairman Dave Thomas called the Public Meeting of the Occupational Safety and Health Standards Board (Board) to order at 10:00 a.m., July 20, 2017, in Room 310 of the County Administration Center, San Diego, California.

ATTENDANCE**Board Members Present**

Dave Thomas
David Harrison
Chris Laszcz-Davis
Barbara Smisko
Laura Stock

Board Member Absent

Patty Quinlan

Board Staff

Marley Hart, Executive Officer
Mike Manieri, Principal Safety Engineer
Peter Healy, Legal Counsel
David Kernazitskas, Senior Safety Engineer
Sarah Money, Executive Assistant

Division of Occupational Safety and Health

Eric Berg, Deputy Chief of Health

Others Present

Saskia Kim, CNA
Suzanne Marria, AIDS Healthcare
Foundation
Mark Kernes, AVN Media Network
Tiffany Yim, Public
Aly Perkins, Public
Sandra Lomeli, Unite Here Local 30
Marla Montoya, Unite Here Local 30
Janette Castillo, Unite Here Local 30
Antonio Vera, Unite Here Local 30
Armando De Leon Lavenant, Unite Here
Local 30

Michael Musser, CA Teachers Association
Kevin Bland, Ogletree Deakins
James Watt, CDPH
Julia Higashi, MDPH, CA TB Controllers
Association
Ian O'Brien, FSC
Liliana Diaz, Unite Here Local 30
Frank Belio, IUEC #18
Beatriz Talavera, Unite Here Local 30
Olivia Hernandez, Unite Here Local 30
Terry Thedell, Sempra Utilities
Harvey Pontes, HII Technical Solutions

Grace Delizo, DOSH	Kevin Thompson, Cal/OSHA Reporter
Jay Weir, AT&T	Paul Mellon, Strategic Materials, Inc.
Steve Grainer, Mitsubishi Electric Company	Matthew Lynch
Eric Robles, UNAC/UHCP	Elizabeth Treanor, PRR
Terence Civic, Materion Brush	Jane Thomason, IH, CNA/NNU
Fionn O'Neill, Kleen Blast/Can Am	Lenie M. Abella, CNA
Pennan Berry, CDPH	Jeff Tannenbaum, ABMA & Nixon Peabody
Don Parret, Xbiz.com	Adam Cohen, AHF
Rachel Bernard, AHF	Derrick Burts, AHF
Mia Li, APAC	Sadre Shaw, Luster Productions
Jamie Carlile, SCE	Kristin Knauch, Public
Michael Strunk, IUOE Local No. 3	Mark G. Wickens, DOSH Elevator Unit
Rick Bates, Unite Here Local 30	Eric Paul Leue, FSC
Siouxie Q James, FSC	Timothy Shadix, Worksafe
Mark Stone, Alliant Insurance Brokers	Dan Leacox, Leacox & Associates
Jennie Ketcham, AHF	

B. DIVISION UPDATE ON BLOODBORNE PATHOGEN PROTECTION IN THE ADULT FILM INDUSTRY

Mr. Berg stated that the Division held an advisory committee on January 31, 2017 to discuss Petitions 557 and 560 and bloodborne pathogen protection in the adult film industry. He said that since the advisory committee, the Division has continued to collaborate with the petitioners to provide education and outreach about enforcement of existing requirements regarding the use of universal precautions and barrier methods of protection in the adult film industry. He stated that at this time, the Division is not planning to do any rulemaking regarding this issue.

C. OPENING COMMENTS

Mr. Thomas indicated that this portion of the Board's meeting is open to any person who is interested in addressing the Board on any matter concerning occupational safety and health or to propose new or revised standards or the repeal of standards as permitted by Labor Code Section 142.2.

Rick Bates, Unite Here Local 30 San Diego, stated that his organization supports the hotel housekeeping proposal as it is written, and he asked the Division to not make changes that weaken any of the provisions. He said that this proposal will make a significant improvement in protecting hotel housekeepers from injury. He asked the Division to make swift progress on this proposal so that the Board can vote on it by November 2017 and it can become law by April 2018. He also asked the following questions:

- When will the comments that were submitted during the 45-day comment period be posted online?
- Will the minutes from the May 18 public hearing be posted online?
- When will the Division release its responses to the comments, and what changes, if any, does the Division propose based on those comments?

Mr. Bates also asked that the Board add an item to its monthly agenda to provide an update on the progress of this proposal.

Ms. Hart stated that comments received during the 45-day comment period are public record, but they are not posted online. She said that anyone who wishes to view the comment letters that were received may submit a public records request to get a copy of them or come to the Board staff's office to view them. She stated that when the May 18 minutes are done, they will be posted online. She said that the Division is responsible for responding, in writing, to all of the comments received for the hotel housekeeping proposal, and these responses will be listed in the Final Statement of Reasons. She stated that the necessary work is in progress, and providing a monthly update will not be helpful.

Sandra Lomeli, Unite Here Local 30 San Diego, stated that injuries to hotel housekeepers can result in permanent disability. She said that during the May 18 public hearing on the hotel housekeeping proposal, many folks commented in support of the proposal, and only 3 people commented in opposition. She asked the Division to move swiftly with reviewing and responding to comments so that a vote on the hotel housekeeping proposal can take place by November 2017 and the proposal can become law by April 2018.

Jane Thomason, CA Nurses Association and National Nurses United, stated that her organizations are opposed to Petition 563 which is attempting to remove the annual tuberculosis (TB) testing requirements from the aerosol transmissible disease (ATD) standard and replace it with a risk assessment from the CDC's guidelines. **Lenie Abella, CA Nurses Association**, echoed this comment. Ms. Thomason said that convening an advisory committee to discuss this would be a duplicative process, as well as a waste of state resources, because from 2003 to 2008, 10 advisory committees were already convened to discuss this issue. She stated that groups of experts discussed the CDC guidelines that are referenced in the petition, as well as the question of how frequently TB testing should be conducted. She said that as a result of these advisory committees, the Board adopted the ATD standard in May of 2009. She feels that holding more advisory committee meetings on this matter is unlikely to result in a different outcome. She also stated that adopting this petition would reduce the occupational protections that are currently provided by the ATD standard. She said that the CDC guidelines referenced in the petition are self-contradictory, based on faulty assumptions, and are not implementable. She also stated that early detection of TB provides the opportunity for treatment, which reduces the risk for developing active TB disease, and provides the opportunity for an accurate exposure investigation to be conducted. **Lenie Abella, CA Nurses Association**, echoed this comment. Ms. Thomason also stated that Petition 563 is an attempt to save money, not to protect worker health. She asked the Board to deny Petition 563. **Eric Robles, United Nurses Association of California and Union of Healthcare Professionals**, echoed Ms. Thomason's comments.

Kathy Hughes, SEIU Nurse Alliance of California, echoed the comments that Ms. Thomason made regarding Petition 563, and also added that keeping the annual TB testing requirements in place allows time for accurate exposure investigations to be done so that the source of the TB can be determined. She said that it also allows employers to measure the effectiveness of their exposure control measures. **Eric Robles, United Nurses Association of California and Union of Healthcare Professionals**, echoed Ms. Thomason's comments.

Tim Shadix, Worksafe, stated that his organization has concerns regarding Petition 563. He said that the current ATD standard provides the best TB protection for healthcare workers. He stated that there could be harm from unnecessary testing, but the current ATD standard recognizes that and only requires testing to be done on employees who have occupational exposure. He also said that many of the issues raised today were addressed during the 10 advisory committee meetings that were held when the ATD standard was being developed, so holding another advisory committee to discuss these same issues again would be a waste of time and resources.

Dr. Julia Higashi, CA Tuberculosis Controllers Association and CA Conference of Local Health Officers, stated that her organizations support Petition 563 because it replaces annual TB testing with a risk-based approach, which is appropriate because of the epidemiology of TB in California and will not put healthcare workers at greater risk for TB. She said that it can prevent harm to healthcare workers through avoidance of treatment for low risk individuals with false positive test results and advance the decline of TB cases by focusing resources on testing and treating employees who are at a higher risk for TB infection and disease progression. She stated that at the time annual TB testing was implemented, TB rates were higher and engineering control practices in healthcare settings were not as effective at protecting healthcare workers from TB. She said that since 2007, TB rates have steadily declined thanks to improved infection control practices, focused attention, and resources in healthcare settings that have resulted in facilities having requirements that are adhered to and much more effective in providing a safe workplace environment. She stated that annual testing has little impact on finding TB early or reducing healthcare worker exposure, and only a small portion of TB cases are evaluated for TB disease as a result of this universal screening. She said that even if annual testing is eliminated, workers will still receive baseline TB testing upon hire, evaluation upon known exposure, and continued annual TB education as required. She stated that annually testing workers for TB that yields a diagnosis of TB infection does not routinely result in preventive treatment for the employee, and many employees who test positive on the job do not receive, or decline, preventive treatment. She said that since the current standard focuses more on TB testing, resources are concentrated more on testing, rather than preventive treatment. She stated that the most effective way to eliminate TB in California is to reduce or eliminate testing on low risk healthcare workers and bring the annual testing requirements into alignment with the federal guidelines for preventing TB transmission in healthcare facilities. She said that this is good for healthcare workers because:

- TB tests are not perfect, and there is no gold standard for TB testing.
- Testing low risk individuals can result in false positives, which can lead to further testing, including chest X-rays and treatment of false positives.
- TB treatment can result in serious, adverse events.
- Focusing on higher risk workers will result in less false positives, thereby reducing harm to healthcare workers.

Dr. Higashi stated that since the number of TB cases that are identified during annual testing is small, there is very little risk of the risk-based testing approach leading to an increase in undiagnosed cases of TB among healthcare workers. She also said that TB risks for infections are not uniform in California, and for counties with 5 or less TB cases per year, the benefits of

annual testing do not outweigh the more significant risks. She said that shifting to a risk-based approach will focus resources more on employees who are at the highest risk for TB while continuing to provide a safe work environment for workers at lower risk. She asked the Board to vote “aye” on Petition 563.

Dr. Pennan Berry, CA Department of Public Health, Tuberculosis Control Branch, stated that his organization has positions and recommendations regarding TB testing, screening, and treatment. He said that his organization prefers a risk-based approach of testing based on the worker’s risk of exposure and progression to TB, and discourages testing for low risk individuals. He stated that healthcare workers should be tested for TB upon hire, and then a risk-based approach should be applied to annual testing. He said that this will help focus resources on the employees who are the most at risk for TB exposure, while avoiding excessive testing and treatment for those who are at low risk for exposure.

Adam Cohen, AIDS Healthcare Foundation, stated that his organization feels that Petition 563 should be denied because it fosters a complicated public health policy that is currently being considered by the legislature. He said that AB 511 was the most recent bill designed to replace annual TB testing with testing based on risk assessment, and the bill has stalled in the Senate Health Committee. He stated that since the legislature has already engaged on the critical public health consequences of this issue, it is best for the Board to defer to the legislature to establish clear public policy on TB testing in healthcare facilities. He also stated that his organization feels that the policy proposed in this petition will be a potential impediment to the increasingly successful efforts that have been made to ensure that people with HIV live healthy and productive lives with non-detectable viral loads. He said that people with HIV are at a considerably higher risk for developing TB than people who have normal immune systems, and they can become ill with TB much faster than those who do not have HIV. He stated that increasing the possibility of exposure to TB aggravates the very real challenges of treating a person with HIV, and the medical protocols for treating someone with both HIV and TB are complicated. He said that treating both illnesses at the same time increases the use of toxic medications, which cumulatively can impede the health of the patient, in addition to possibly causing drug-to-drug interactions. He stated that in the healthcare setting, there are many potential opportunities for an HIV patient to be exposed to TB, since many of them are frequently receiving care that is in close proximity to them, and the people providing this care would fall under the risk assessment-based testing protocol if this petition passes. He said that this will cause the risk of potential exposure to TB to rise to unacceptable levels. He stated that testing protocols like the one that is currently in place help protect HIV patients from exposure, keeping their viral loads low.

Mr. Cohen also asked that Petition 557 to remain active into the fall of 2017 so that his organization and the Division can have further meetings to discuss collaborative efforts regarding bloodborne pathogen protection in the adult film industry. He said that adult film workers are employees, and therefore, they are entitled to effective hazard training, barrier protection provided by their employer without retaliation, and testing and treatment that is paid for by their employer, but not all of the adult film studios comply with the existing law. He stated that his organization feels that regulatory action is needed to help enforce the existing law, which requires adult film performers to wear condoms, but will help the Division to provide further outreach and education to performers, producers, and agents, in an effort to improve the public health situation for performers and increase compliance with existing law. He said that it is important for adult film performers to know that they can file anonymous

complaints to the Division if their employer is not complying with the existing law, and it is also important that the Division conducts robust enforcement of the law. He stated that gonorrhea is an STI that is becoming increasingly difficult to treat, and rates of gonorrhea infections are highest in the adult film industry due to lack of condom use. He also said that STI's that are acquired by adult film performers can easily be spread to the general public, which makes treatment and eradication of STI's more difficult.

Dr. Julia Higashi, CA Tuberculosis Controllers Association and CA Conference of Local Health Officers, stated that AB 511 does not include healthcare workers.

Karen Tynan, Free Speech Coalition, stated that she is pleased to hear that the Division will be doing education and outreach to the adult film industry regarding bloodborne pathogen protection. She also stated that she hopes that the Division will recognize who the true stakeholders are in this case, and that the Division's outreach efforts will help to educate the adult film community. **Ian O'Brien, Free Speech Coalition**, echoed Ms. Tynan's comments.

Jenny Ketcham, Former Adult Film Performer, stated that she is glad that the Division is collaborating with stakeholders and providing outreach, education, and enforcement regarding bloodborne pathogen protection in the adult film industry. She said that enforcement is a critical factor in long term change and will ensure performer safety over time. She stated that testing is only effective if it requires all performers to be current and up-to-date on their testing before they go to work. She stated that she is curious about the timelines and practicalities regarding enforcement of regulations pertaining to barrier protection. She said that PEP and PREP provide great protection from AIDS, but not from HIV and not all STI's that performers may be exposed to. She also said that employers cannot require employees to take PEP and PREP medications before going to work, so requiring performers to use barrier protection is the best option.

Mia Li, Adult Film Performer, stated that it is important for adult film performers to have control over their bodies and to be able to choose the amount of risk that they are willing to take when working. She said that denying the proposal in February 2016 regarding bloodborne pathogen protection in the adult film industry has allowed performers to continue to have control over their bodies. She stated that collaboration between the adult film industry and the Division has been helpful to provide outreach, education, and enforcement to the adult film community that keeps performers safe. She said that many adult film performers are independent contractors who voluntarily adhere to the industry's protocols and risk management procedures. She also stated that many performers endure and internalize the stigma that surrounds the industry.

Derrick Burts, Former Adult Film Performer, stated that his career in the adult film industry only lasted 6 months, and during that time, he contracted chlamydia, gonorrhea, herpes, and HIV. He said that it has been very difficult for him and had a significant impact on him. He stated that the industry blatantly disregards the law, and as a result, 1 out of every 4 adult film performers is diagnosed with a sexually transmitted infection (STI). He said that he would like to hear more specific details regarding how outreach, education, and enforcement will be done, and what it will include, especially since there is a lack of enforcement going on right now because there is not enough staff for the Division to do proper enforcement.

Siouxie Q James, Free Speech Coalition, stated that it is important that adult film performers are able to maintain control over the choices that they make regarding what they do with their bodies. She said that prioritizing personal protective equipment over engineering and administrative controls inverts the hierarchy of controls. She stated that personal protective equipment is the least effective modality for protecting adult film workers against STI's, and engineering and administrative controls have a proven track record of effectiveness. One of those controls that the industry uses is the 14-day testing protocol, and since this protocol was implemented, there has not been an on-set transmission of HIV in over 12 years. She stated that her organization will remain in collaboration with the Division regarding education and outreach in the adult film industry to make sure that the health, safety, and humanity of the adult film workforce is protected.

Marcelo, Adult Film Performer, stated that many adult film workers love their jobs and want to keep doing their jobs. He said that if the industry becomes regulated in California to the point that it becomes impossible for workers to do their jobs, the work will still be done, but it will be very difficult for them to do their jobs. He stated that it is very naïve to regulate the adult film industry in California because adult film is a worldwide industry, and regulating it in California will be dangerous for performers.

Five Star, Adult Film Producer, stated that she has been working for a large adult film production company that recently closed and moved out of California. She said that she has faith in the industry's current protocols regarding bloodborne pathogen protection, and she asked the Division to continue listening to, and working with, employees in the adult film industry. **Tim Woodman, Adult Film Performer**, echoed Ms. Star's comments.

Sadie Shaw, Adult Film Videographer and Talent Booker, stated that it is her job to make sure that adult film performers are tested before they work, and when they are working, that they feel comfortable doing the work. She stated that adult film performers want to be tested before they go to work. She thanked the Board and the Division for looking past the stigma associated with adult film and helping performers to get what they need in order to be safe at work.

Eric Leue, Free Speech Coalition, stated that his organization is aware that gonorrhea is becoming increasingly more difficult to treat, but there is more than one reason why that is happening, one of which is because of incomplete treatment cycles. He said that all of those reasons need to be addressed, not just one. He stated that his organization is looking forward to continuing collaboration with the Division to develop communication, address compliance, and to find healthy options that are available under the current regulations to protect adult film workers from STI's. He said that this collaboration will provide education and outreach to the adult film community, will allow the Division the opportunity to understand the unique nuances of the industry, and will help both parties to develop solutions that will effectively address them. He stated that his organization cares about their workers, and that is why they use a hierarchy of controls to determine what the most effective measures of protection are for adult film workers.

Kevin Bland, representing the Free Speech Coalition, thanked the Division for its collaboration with adult film workers to provide outreach and education regarding the existing bloodborne pathogen protection standard. He said that he is pleased to see that the workers' voices are being heard and listened to. He also thanked the adult film workers who have

provided their testimony to the Board.

Suzanne Marria, AIDS Healthcare Foundation, stated that it is encouraging that many more people on both sides of this issue are talking about collaborating, but there is still a lot of confusion. She said that there are not enough inspectors for the Division to do proper enforcement of the current bloodborne pathogen protection standard in this industry and bring into compliance employers who have chosen not to comply. She stated that as a result of this, adult film workers are exposed to illnesses that the bloodborne pathogen protection standard and the IIPP are designed to protect them from. She also said that she is concerned about the continuing argument regarding workers' agency over their bodies because the employer is responsible for protecting workers from known hazards at their jobs. She stated that her organization welcomes the opportunity to collaborate with the Division and the adult film industry, but the industry must do more to protect its workers, including sharing the data that was offered and requested by the Division at the January 31 advisory committee. She said that this data will go a long way in informing the Division, employers, and workers about the effectiveness of the current industry testing protocol, as well as how many people participate in the testing protocol. She stated that the current 14-day testing protocol does not meet all of the performer's needs. She said that both parties need to come together and collaborate to achieve compliance, and they need time to see how the collaboration goes. She stated that new performers come into the industry daily and don't know what their rights are, or what protections are available to them, except for what the industry tells them, and some STI's can have a significant impact on the performer's life.

Mia Li, Adult Film Performer, stated that she is self-employed and an independent contractor who works for adult film companies, but also produces her own webcam content. She said that not all adult film performers work for adult film companies. She stated that some of them are married couples who only perform with each other, so requiring them to comply with the current barrier protection standard is problematic. She said that the advisory committee was a big step toward fighting the stigma that surrounds adult film workers by allowing their voices to be heard. She stated that criminalizing the intimacy of a married couple will drive the adult film industry underground, where performers are not able to speak up for themselves.

D. ADJOURNMENT

Mr. Thomas adjourned the public meeting at 11:15 a.m.

II. PUBLIC HEARING

Mr. Thomas called the Public Hearing of the Board to order at 11:15 a.m., July 20, 2017, in Room 310 of the County Administration Center, San Diego, California.

Mr. Thomas opened the Public Hearing and introduced the first item noticed for public hearing.

1. **TITLE 8:** **CONSTRUCTION, GENERAL INDUSTRY, AND SHIP BUILDING, SHIP REPAIRING AND SHIP BREAKING SAFETY ORDERS**
New Sections 1535.1, 5205, 8359.1, and existing Section 5155
Occupational Exposure to Beryllium (HORCHER)

Mr. Kernazitskas summarized the history and purpose of the proposal, as set out in the Informative Digest Notice, and indicated that the proposal is ready for the Board's consideration and the public's comment.

Paul Mellon, Strategic Materials, stated that his organization feels the federal standard that was passed on January 9 should be adopted by the Board. He said that federal OSHA is not changing the rule at this moment, but they are reopening the rule to get additional information from the public and the states regarding whether or not they should keep the rule unchanged. He stated that there are many suitable non-slag alternatives to beryllium that can be used, such as garnet and glass, and there are several unique benefits to using them, including:

- It creates less dust.
- It is cost effective.
- It creates a cleaner finish for recoating.
- Minimal impact on landfills compared to that of coal ash.

He said that this proposal will not result in jobs being lost. In fact, it will add jobs to the industry as new glass and garnet plants come online, and some existing coal and copper slag plants can be converted from using coal and copper slag to using crushed glass. He also stated that these non-slag alternatives have been approved by the navy and the ship building industry, can be used in any shipyard in the United States, and are currently being used here in California. He said that many corporations are in support of the federal rule and are moving away from using coal and copper slag, which supports California's decision to go with the January 9 federal final rule.

Tim Shadix, Worksafe, stated that his organization feels the Board should adopt the federal final rule as it has been promulgated. He said that his organization believes that promulgation of a standard occurs when the standard is published in the federal register, so this standard has indeed been promulgated by federal OSHA. He stated that there are no reasons to deviate from the federal standard because the current California standard does not go beyond what is stated in the federal standard. He said that reopening some parts of the standard is a political process, and issuing a proposed notice of rulemaking and comment period is speculative because it is unknown where it will go. He stated that it is also not part of the final rule that was promulgated in January, and it would not be appropriate to attach California's rulemaking process to that. He said that the general exposure limit is mentioned in the California standard, but there aren't any vertical standards specific to industries in particular context where beryllium exposure may occur,

and his organization feels that it is important to have those vertical standards in place to protect workers. He also stated that there is no known safe exposure level to beryllium, so exposure should be avoided in all contexts.

Elizabeth Treanor, Phylmar Regulatory Roundtable, stated that her organization would prefer that the Board take no action on this proposal at this time. She said that it is unknown what the final federal standard will actually say because the comment period ends on August 28. She also stated that federal OSHA is in active settlement discussions with the parties involved in the 12 lawsuits that were filed against it, and it is unknown when these issues will be resolved. She said that there are issues that are unique to California related to this proposal, such as the fact that California has a PEL that has been protecting workers, in addition to the required injury and illness prevention plans and personal protective equipment. She stated that federal OSHA is planning to clarify some of the requirements in the General Industry portion of the standard, but it is unknown whether this will be done with a compliance directive or a rule. She said that federal OSHA sometimes issues compliance directives that change the provisions of their requirements, but California is not permitted to do this under the Administrative Procedures Act. As a result, California must enforce the actual language of the standard, so it is good for California to know what the standard is if people are going to be required to comply with it, especially if the Board is going to rely on federal OSHA's explanations and rationale. She stated that federal OSHA is deferring enforcement of the construction and shipyard requirements in its standard, so if the Board is not going to delay adopting this proposal, the Board should at least delay the effective date.

Terence Civic, Materion and Brush, stated that his organization would prefer that the Board take no action on this proposal at this time. He said that beryllium is critical to many industries and is a naturally-occurring substance. He stated that it is essential for medical and X-ray jobs, and there are other areas where substitutes cannot be used because it is critical to the safety of the application. He said that meetings are in progress with federal OSHA and others to discuss changes to the general industry standard, and the method through which those changes will occur. He stated that adopting a rule that everyone knows is going to change is a disservice to California.

Fionn O'Neill, Kleen Blast Abrasives, stated that his organization would prefer that the Board wait to see what federal OSHA's final proposal will be before taking action on this proposal. He said that all abrasive, including glass, garnet, copper slag, and steel slag, as well as the objects that are being blasted, contain trace amounts of beryllium. **Jeff Tannenbaum, Nixon Peabody, LLP, representing Kleen Blast, Can Am Minerals, and the Abrasive Blasting Manufacturer's Alliance (ABMA)**, echoed this comment. Mr. O'Neill stated that the current PEL is sufficient to protect employees from exposure, and protective measures, such as full body suits with supplied air, are already in place to protect them from exposure to any type of dust. He said that this proposal will cost small businesses a lot of money, will potentially put them out of business, and will not provide any additional protections for employees.

Jeff Tannenbaum, Nixon Peabody, LLP, representing Kleen Blast, Can Am Minerals, and the Abrasive Blasting Manufacturer's Alliance (ABMA), stated that the focus of this proposal seems to be on the trace amounts of beryllium that are present in all abrasives, rather than on all of the hazards associated with abrasive blasting. He said that delaying action on this proposal is appropriate due to the unusual circumstance that is currently going on. He stated that federal OSHA has recognized that there are significant issues with the rule that they issued, and they have opened a rulemaking that would eliminate the vast majority of the safety orders that are in this proposal. He said that there are ongoing negotiations regarding the general industry portion of the rule that was developed in January, and he feels that federal OSHA will most likely reopen a rulemaking for a general industry standard. He stated that the rulemakings for general industry and shipyards are not finalized yet, and the compliance dates do not start until 2018, so there is time to wait and see what happens with the federal OSHA standard before moving forward. He said that in order to use the Horcher process, a final rule must be promulgated, which means that the federal final rule has been finalized and is now in effect, and that has not happened yet in this case. He also stated that it is important to consider the reasons why federal OSHA is reconsidering its proposal:

- Construction and shipyard standards were added at the last minute by federal OSHA, and they were added without federal OSHA publishing specific standards for each of them for notice and comment. The new proposal from federal OSHA acknowledges that construction and shipyard industry workers are already protected from beryllium exposure by the existing federal OSHA construction and shipyard standards, and the California standards go beyond that.
- Federal OSHA's rulemaking does not contain any studies that identify any adverse health effects from exposure to beryllium in construction and shipyards. Instead, federal OSHA relied on studies that show adverse health effects in general industry workplaces where there was exposure to higher amounts of beryllium alloys in salts, not the mineral form of beryllium which is naturally-occurring and found in trace amounts in blasting materials. The existing PEL's and personal protective equipment used to control an employee's exposure to beryllium are already effective, and the mineral form of beryllium acts in different ways than beryllium alloy does. There is no evidence to show that there are adverse health effects from exposure to the mineral form of beryllium.
- After reviewing the data again, federal OSHA determined that worker exposure to beryllium in construction and shipyards is already typically below the PEL's that are proposed in the new rule, and therefore, they are below the PEL's in the current California rule.

Mr. Tannenbaum also stated that California's current beryllium rule is already at least as effective as the January 9 federal OSHA rule because:

- California already has an abrasive blasting regulation in place that has no equivalent in the federal OSHA rule.

- Under Section 5155, California requires workplace monitoring and medical surveillance of workers when necessary to protect workers' health and ascertain effectiveness of control measures. This is broader than what is required in the Fed OSHA rule.
- California has an IIPP standard that has no equivalent in the federal OSHA rule.
- California's welding standards are much broader than those of federal OSHA.

Jim Spurgeon, Canyon Minerals, stated that his customers have stated that they may close up shop and not be involved in abrasive blasting if this proposal is adopted. He said that with the uncertainty of abrasive blasting, the personal protective equipment that will be required to do it, and the extreme cost of monitoring that will be required with this proposal, customers will revert back to using chemical stripping. He stated that chemical stripping is a health, safety, and environmental disaster, so abrasive blasting is the only safe way to remove coatings. He also stated that if customers decide to no longer use abrasive blasting because this proposal is adopted, it will cause abrasive blasting companies to shut down and employees to lose their jobs. He asked the Board to wait and see what happens at the federal level before taking action on this proposal.

Kevin Bland, representing the Western Steel Council, stated that his organization agrees with the comments made by Mr. Tannenbaum and that the Horcher adoption should not be followed when it comes to construction. He said that this issue was not properly vetted by federal OSHA, so his organization would like to have an opportunity to further vet this issue. He asked the Board to wait to take action on this proposal until action is needed.

Ms. Stock stated that she supports moving forward with this proposal. She said that it has been promulgated by federal OSHA, the requirements are clear, and the proposal seems to be very straightforward. She said that this is not the first time that lawsuits or uncertainty have happened on the federal level, and it is unknown where the process will end, but it is the Board's responsibility to move forward within 6 months of a rule being promulgated.

Ms. Laszcz-Davis asked if there are still enough protections in place for workers in the current standard in case the Board decides to do nothing at this point. **Ms. Hart** stated that California currently has a PEL of 0.2 μ per cubic meter, which is the same as what is listed in the Horcher, but unlike the federal standard, California's current standard has a ceiling value. She said that if the Horcher is adopted, a STEL would have to be added to the construction and maritime standards. She stated that there are vertical standards in place in California for ventilation and personal protective equipment for welding and abrasive blasting, as well as other applicable regulations. She said that if the Horcher is not adopted, the ancillary requirements in the Horcher would not be implemented for construction and maritime. She stated that California already has a beryllium standard that goes further than the federal standard, but there are some areas where California would be deficient if the Horcher is not adopted.

Ms. Smisko asked if the Horcher proposal would cover the STEL. She also asked if the Horcher proposal will add in some of the pieces of the federal language that are not currently in the California standard. She said that this is a unique situation that may require additional

understanding, and because of this, she wanted to know what options the Board can take. **Ms. Hart** stated that the Board will need to provide direction on how to proceed. She said that if the Board Members would like more time to think about this, the Board can do so and then discuss it further at next month's meeting before making a decision.

Mr. Harrison noted that in Mr. Mellon's and Mr. Civic's comments made today, they referenced a joint proposal that was developed between labor and industry representatives and then was sent to federal OSHA, and several changes were made from that proposal to the final rule that was adopted by federal OSHA on January 9. He said that he would like the Board staff to research that joint proposal and tell the Board what those changes were. He stated that he would also like to continue moving forward with the Horcher process on this because there is flexibility on this due to the uniqueness of this rule. He said that it might be appropriate to continue the public hearing on this to next month's meeting.

Ms. Stock stated that it might be interesting and useful for the Board to have background information on the pros and cons of a beryllium rule, as well as information on the joint labor management proposal and whether or not it was adopted. She said that if the discussion is continued next month, she hopes that the discussion does not focus on the value of a beryllium rule, or what it should look like. She stated that federal OSHA is in a very unpredictable state right now, and as a result, many rules that get promulgated may get changed.

Ms. Smisko stated that she supports the idea of continuing this discussion at next month's meeting, but she feels that the discussion should focus on the federal standard that has been promulgated and whether or not the Board should move forward with it, rather than focus on whether or not the Board thinks it's a good idea. She said that she wants to understand the uniqueness of this situation, as well as the options available to the Board and to the businesses in California. **Ms. Laszcz-Davis** echoed Ms. Smisko's comments.

The decision was made by the Board that this proposal will be prepared for adoption at next month's meeting, and the Board will have any further necessary discussion at that time before it is voted on.

A. ADJOURNMENT

Mr. Thomas adjourned the Public Hearing at 12:30 p.m.

Mr. Thomas called for a break at 12:30 p.m. and reconvened the meeting at 12:45 p.m.

III. BUSINESS MEETING

Mr. Thomas called the Business Meeting of the Board to order at 12:45 p.m., July 20, 2017, in Room 310 of the County Administration Center, San Diego, California.

A. PROPOSED PETITION DECISIONS FOR ADOPTION

1. Ken Cutler
CA Conference of Local Health Officers
Petition File No. 563

Petitioner requests that employers of certain health care workers be allowed to make tuberculosis testing and assessment available to those employees less frequently than once a year.

Ms. Hart summarized the history and purpose of the petition, and stated that the proposed recommendation is to adopt the petition decision.

Mr. Harrison stated that the current ATD standard was adopted in 2009 after 5 years of advisory committee meetings were held, and since then, TB rates have gone down. He said that it makes no sense to change a standard that is working, so he could not support the proposed petition decision. **Ms. Stock** echoed Mr. Harrison's comments.

MOTION

A motion was made by Mr. Harrison and seconded by Mr. Thomas that the Board deny the petition.

A roll call was taken, and all members present voted "aye." The motion passed.

B. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Mr. Healy stated that a correction was made to the proposed decision for OSHSB File No. 16-V-238 to update the location address of the subject apple feeder from a construction address to a permanent address. He also stated that item K on the consent calendar, OSHSB File No. 17-V-069, should be removed from the consent calendar, and no action taken on it, because the proposed decision is still pending. He said that he is aware of no unresolved legal issues regarding items A-J on the consent calendar, and he believes that they are ready for the Board's decision on the question of adoption.

MOTION

A motion was made by Ms. Stock and seconded by Ms. Laszcz-Davis to adopt the consent calendar as modified.

A roll call was taken, and all members present voted "aye." The motion passed.

C. OTHER

1. Executive Officer's Report

Ms. Hart asked Mr. Healy to give the Legislative Update. **Mr. Healy** provided updates on the following bills:

- AB 402 pertains to medical plume. This bill has been referred out of the Senate Labor and Industrial Relations Committee and has gone to the Senate Appropriations Committee.

- AB 978 pertains to employees' right to access their workplace's injury and illness prevention program upon request. This bill has been referred out of the Senate Labor and Industrial Relations Committee and has gone to the Senate Appropriations Committee.
- SB 772 exempts any occupational safety and health standard and order from the standardized regulatory impact analysis requirement of the Administrative Procedures Act that has the \$50 million threshold for extensive economic analysis. This bill has been referred out of the Senate Labor and Employment Committee and has gone to the Senate Appropriations Committee.

2. Future Agenda Items

No future agenda items were suggested.

D. ADJOURNMENT

Mr. Thomas adjourned the Business Meeting at 1:03 p.m.